

No. 9991 27

In the Supreme Court of the United States

OCTOBER TERM, 1956

LOCAL 1976, UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, A. F. L.; LOS ANGELES COUNTY
DISTRICT COUNCIL OF CARPENTERS; NATHAN FLEISHER,
PETITIONERS

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

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LOCAL 1976, UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, A. F. L.; LOS ANGELES COUNTY
DISTRICT COUNCIL OF CARPENTERS; NATHAN FLEISHER,
PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

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The question presented is whether union inducement of employee refusals to work on nonunion goods, which would otherwise be proscribed as a secondary boycott by Section 8 (b) (4) (A) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), remains an unfair labor practice in spite of the fact that the employer and the union have agreed by contract that the employees "shall not be required to work on nonunion materials."

The Board believes that the decision of the court below, holding the union's actions illegal, is correct. However, the decision below, which accords with the views expressed by the Sixth Circuit in *National Labor Relations Board v. Local 11, United Brotherhood of Carpenters*, 242 F. 2d 932, is in direct conflict with the decisions of the Second and the District of Columbia Circuits in *Milk Drivers and Dairy Local Union No. 338, et al. v. National Labor Relations Board* (C. A. 2), decided June 19, 1957, 40 LRRM 2279, and *General Drivers, Local No. 886 v. National Labor Relations Board* (C. A. D. C.), decided May 9, 1957, 40 LRRM 2047. Concurrently with this memorandum, the Government is filing a petition for certiorari in the *General Drivers* case and has under consideration the advisability of filing a petition in the *Milk Drivers* case.

The question presented is of major importance in the administration of the Act. The kind of contract clause involved in these cases, popularly termed a "hot cargo" clause, is widely used, and the conclusion that such a clause provides a valid defense to a Section 8 (b) (4) (A) violation would have the effect of insulating from the regulatory control of the Act a substantial amount of secondary boycott activity. The problems involved are more fully discussed in the Board's petition in the *General Drivers* case, to which the Court is respectfully referred.

Accordingly, the Government does not oppose the granting of the petition for certiorari in this case.

Respectfully submitted.

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